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Legal Aspects of Ensuring Gender Equality

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Abstract

The article is devoted to the study of the value of the idea of gender equality. Legal (gender) equality implies equal rights and opportunities for both men and women. In the context of European integration processes, the issue of ensuring and guaranteeing social and legal equality in all spheres of public life, both de jure and de facto, is important and relevant for Ukraine. With this in mind, bridging the gap and guaranteeing gender equality, including analysing the legal framework and guaranteeing equal rights and opportunities for both men and women in all spheres of public life, makes this study very relevant. The purpose of the article is to study the provision of gender equality in society, analyse the legal framework, and to clarify the causes of gender discrimination and help to overcome gender gaps in the social, cultural, political and economic spheres and more. The study of this problem uses a wide range of methods of scientific knowledge: the theoretical method allows organising a variety of knowledge about gender. The sociological method helps to identify various gender parameters and compare them with social characteristics. The application of the historical method allows for a gender assessment of various historical processes. The prognostic method allowed to find out the prospects of gender development both in the region in particular and in the developed civilized society in general. Socio-psychological method allows exploring the social roles of men and women, the relationship between the sexes, their features and psychological characteristics. The article presents the results of the study of gender issues both in the world and in Ukraine; the specific features of the division of society into two social groups on the basis of gender are covered; it is clarified how the gender approach is implemented in politics, economics and social sphere; the main directions of ensuring gender equality, guaranteed by international and Ukrainian legislation, are identified. The scientific article substantiates the need to use the gender component in legislative activities, including in politics, economics, social sphere; the necessity of using the advanced world experience of ensuring and realisation of gender equality is substantiated; based on the results of systematic scientific analysis, the basic principles of gender policy implementation in modern national and foreign legislation are determined

Keywords: gender, gender equality of men and women, discrimination on the basis of gender

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Introduction

At the heart of any democratic society are the interests and needs of different social groups. These groups differ in a number of ways, such as gender, social status, age, ethnicity or nationality, religious beliefs, region of residence, health status, sexual orientation, etc. Ensuring equality between different members of social groups is one of the main tasks of society. Today, the priority areas of society include ensuring gender equality. Gender equality and equality between men and women is one of the goals of sustainable development. The issue of gender equality does not lose its relevance over time, in connection with which there are many new scientific studies on this topic.

Gender issues, and especially gender equality, have been quite relevant since the middle of the last century. For two thousand years, such Ukrainian scholars have published their research on gender issues. Among the Ukrainian scientists who have been paying a lot of attention to the gender issue lately, we can name Y.Y. Bobrova, who in her dissertation researches the issues of gender aspects of judicial activity. This study is of great scientific value conditioned upon the fact that it identifies and scientifically substantiates the historical periods of gender symmetry in the activities of judges in Ukraine, and establishes the specifics of judicial activity as a legal category through the prism of gender understanding. In addition, Y.Y. Bobrova managed to highlight the problems of the legal principle of gender equality of judges in the modern gender legislation of Ukraine [1]. O. Kharytonova also addresses the issue of gender in his works. In her research, as a specialist in criminal law, she explores gender issues in criminal law [2]. It should be noted that the researcher pays special attention to highlighting the key principles of gender mainstreaming in Ukrainian criminal law. Particular attention in the study is paid to reforming society to prevent violence against women, including domestic violence and its prevention [3].

The study of macroeconomic indicators in overcoming gender inequality is devoted to research of modern scientists V. Kostyuchenko and L. Khoynatska. In their study, they conclude that the country's unstable progress in overcoming gender discrimination [4]. The issue of gender equality as a basis of human rights and the situation in which various factors cause and support the gender pay gap in different countries of the world, is the subject of research of J. Huang *et al.* [5]. The research of L. Samilyk and others is devoted to the issue of implementation of gender policy in public authorities [6]. In this study, based on the analysis of gender policy in public administration, the essence of gender policy in the public sector is determined. The most effective tools of gender integration are identified in the study.

In general, the issue of gender is constantly raised by various scholars. Bridging gender gaps and finding ways to prevent gender discrimination encourages both researchers and practitioners to conduct new research

in this area. This study is no exception and aims to highlight the legal aspects of gender equality.

The purpose of the article is to study the provision of gender equality in society, analyse the legal framework for gender equality, and to clarify the causes of gender discrimination and help overcome gender gaps in the social, cultural, political and economic spheres and more.

Materials and Methods

A wide range of methods of scientific cognition was used in the study of this problem. Among them it is necessary to allocate the theoretical method which allows organising knowledge about a gender properly. In addition, the study uses general theoretical methods to analyse qualitative and quantitative data, to provide statistical information. Thus, statistical observations provide a general picture of inequality between men and women.

When using structural analysis on gender, scientists can use the same criteria as when characterising society. In particular, in the study of gender, both the private and public spheres are singled out. The use of the historical-genetic method allows for a two-pronged approach in assessing specific situations, various historical events or activities of society. This approach allows highlighting different issues from the standpoint of both sexes. At the same time, gender assessment of historical processes to some extent expands the awareness and understanding of the hierarchy of power.

The application of the sociological method allows analysing family relationships, employment and professional activities of both sexes. And the socio-psychological method contributes to the study of socially constructed male and female roles, the relationship between the sexes, identity and gender. The empirical method helps to identify the positive and negative experience of gender activity, and the application of the prognostic method allowed to determine the prospects of gender development in the country. In general, gender studies do not focus on one sex, but on the dialogue of both sexes. In view of this statement, within the framework of the gender approach, a dogma has been formed that men and women are not born, but become them. According to this approach, there is neither male nor female, and gender itself is a social category intended for the body that has sex. Proponents of gender theory, without denying the difference between men and women, point out that what is important is not the difference between the sexes, but the sociocultural evaluation of the sexes and the interpretation and creation of a sustainable system based on this difference. The difference between the sexes is based on the inequality of the sexes. The gender hierarchy is also a product of inequality. Until the ideology of gender differences changes, until the demand for gender equality

by women will be interpreted as a desire to have equal rights with men. Gender theorists today face a new challenge: instead of addressing gender equality, they should consider the diversity and multiplicity of differences between individuals.

Gender issues cannot be explored without an integrated approach. It is a comprehensive approach that allows the use of a wide range of methods when considering various aspects of gender issues.

As a theory and method, gender studies have become widespread. Gender relations are seen as socially organised relations of inequality and power. The gender category has opened up new opportunities for the analysis of culture and society. Gradually, the confrontation between female and male loses its biological features. Conditioned upon gender, a person's value orientations change, many legal approaches and "truths" established in society are revised.

Results and Discussion

Research on ensuring gender equality in society

Signs of building the rule of law include guaranteeing the equality of all citizens of this state. The principle of equality of citizens is implemented under the rule of law and means equal rights and opportunities for all women and men without exception. Women on an equal footing with men receive equal opportunities and rights in the economic, political, social, cultural, and public spheres. Ensuring gender equality for men and women means that the needs and interests of different social groups, which include both men and women, must be respected. Women and men belong to different gender groups, but regardless of the group, they must be adequately represented in different spheres of life.

The division of biological sexes into women and men is called gender binary. Society divides people into women and men, who must act in accordance with the gender roles defined by that society. Gender roles determine people's self-expression depending on gender. Gender roles influence the form of behaviour, the choice of profession and even the choice of clothing of a person. Gender roles affect all aspects of self-expression including people's life experiences.

Well-known feminist Valerie Braison pointed out that most of the existing differences between men and women are a social issue based on gender, not the natural quality of the sexes [7]. Among the researchers, there are those who deny the gender binary code. Thus, Judith Lorber points out that there is no doubt about the distribution of people by gender, but the gender binary, in her opinion, is arbitrary [8].

A gender approach in the analysis of the situation of women and men is used by a wide range of scientists. Thus, for the first time in independent Ukraine, the issue of analysis of the situation of men and women was raised within the project "Gender in Development" of the

United Nations Development Programme (UNDP), which resulted in the work "Gender Analysis of Ukrainian Society" [9]. The result of the UNDP project in 2001 was the publication of the results of a study, namely gender expertise of sectoral legislation.

The analysis of the legal framework for gender equality

The specific feature of modern gender policy in Ukraine is that it is based on various kinds of international legal acts ratified by Ukraine, and on national legislation that enshrines and guarantees equality between men and women.

Among the acts of international legislation that help regulate state gender policy in Ukraine are: the Universal Declaration of Human Rights (1948) [10], The Convention on the Elimination of All Forms of Discrimination against Women (1979) [11], the Beijing Declaration and the Platform actions (1995) [12], the UN Convention on the Elimination of All Forms of Discrimination against Women (1999) [13], the UN Millennium Declaration (2000) [14].

The legal norms of international documents are the embodiment of the generalised practice of the world experience of gender transformations. The specific feature of international law is that it contains a state basis and is formed through various agreements between states. Each state that has ratified an international instrument must ensure the implementation of the rights set forth in this international instrument, in this case the provision and implementation of gender policy. Among the various international programmes, strategies and standards, priority is given to documents that contain provisions for the adoption of gender legislation, the creation of a national mechanism for legal support of gender equality, based on the implementation of international gender legal standards, promoting gender movement, conducting and analysing gender statistics and various types of gender research.

Creating an effective national and international legal mechanism for regulating various types of gender relations and its effective functioning is the main task of a democratic society and the rule of law.

According to national legislation, gender equality between women and men is guaranteed by the Constitution of Ukraine [15] — Art. 24, and a number of other legal acts, namely: the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" (2005) [16], the Law of Ukraine "On Combating Trafficking in Human Beings" (2011) [17], the Law of Ukraine "On Prevention of Domestic Violence" (2002) [18], the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" (2012) [19], the Law of Ukraine "On Employment" (2012) [20], the Order of the Ministry of Education and Science of Ukraine "On the Implementation of Gender Equality in Education" (2009) [21], the Resolution of the Cabinet of Ministers

“On Approval of the State Social Programme, to Ensure Equal Rights and Opportunities for Women and Men until 2021” (2018) [22] and the like.

Identifying the causes of gender discrimination and developing recommendations for bridging gender gaps in the social, cultural, political and economic spheres

Speaking of gender, we note that the historical precondition for addressing gender issues was feminism. The term “feminism” was first used by the French scientist Francois Marie Charles Fourier in 1837. He saw feminism as the empowerment of women and argued that social progress was possible only with the empowerment of women.

Another well-known British economist and politician, John Stuart Mill, argued that “legislative support for the subordination of one sex to another is harmful and one of the main obstacles to universal improvement” [23]. He even submitted a petition to the British Parliament demanding that women be given the right to vote. This petition marked the beginning of the struggle for the right to vote for British women.

One of the most famous members of the feminist movement, Simone de Beauvoir, explored the issue of discrimination and humiliation of women in her work “The Second Sex”. She found out the reasons for the subordinate position in which women found themselves [24]. The researcher called for a change in the position of women in society. In the middle of the last century, such appeals were considered revolutionary, and the Vatican added “The Second Sex” to the list of banned books.

Note that supporters of the principle of gender equality deny the difference between the sexes. During the twentieth century, the position of the woman, and her status has changed markedly. Today, women study freely at university and have the right to vote and to be elected to public and state positions on an equal footing with men.

In historical practice, the gender issue of gender equality has often come to be seen as one of the fundamental principles of a democratic society. In recent times, gender has been a lever for real change in public relations, the basic component of which is the status of men and women. Gender is a society-modeled, state-supported system of values, characteristics and norms of male and female behaviour, way of thinking and lifestyle, attitudes and roles of men and women acquired by them in the process of socialisation determined by political, economic, cultural and social contexts and captures the idea of a man or a woman depending on gender [25, p. 11].

Today, the issue of ensuring gender equality is in the field of view of the world community. Every year, the World Economic Forum prepares a Global Gender Gap Report. This report shows four indicators of inequality

between men and women: economic participation, education, political representation and health. According to the World Economic Forum, Ukraine in 2021 took 74th place among 156 countries [26]. Therefore, the issue of gender for Ukraine is quite relevant today.

Speaking of gender theory, it should be noted that it is a system of scientific views on the relationship and status of men and women, their life experience and social life, acquisition and implementation of socio-role characteristics and features [24, p. 13].

Gender theory examines the lives of both sexes, both men and women, their behaviour in society, the roles they play, the common and different between them, the relationship between the sexes, etc. The difference that exists between gender and sex accumulates the assertion that there is a direct link between gender and gender roles assigned to men and women in society. Axiom, which originated in the XIX century that the idea of natural equality of all people and natural inequality between the sexes is realised in society, continues to operate through the centuries, despite the progress which humanity has achieved during this period of time.

To date, gender analysis of public policy has identified disparities in both social and economic security of the reproductive sphere. This area has been reproduced for generations based on the unpaid work of women. Therefore, the government constantly emphasises the “adaptability” of women and the “naturalness” of their home comfort and care and care for all family members, including both husband and children. This is to some extent conditioned upon the traditions that have developed in the cultural environment. One of the aspects of culture is the legal culture of society [27]. The settlement of the gender issue is inextricably linked with the level of legal culture of society.

Speaking of gender, namely the relationship between men and women, it must be said that in Ukraine these relations are to some extent regulated by infralaw. Infralaw is not a literal right. According to T. Melnyk, it “covers thoughts, assessments, beliefs, figurative ideas, habits, stereotypes of behaviour, customs, etc., the combination of which latently affects the motivation of behavior in areas regulated by law” [9, p. 282]. The scientist emphasises that the relationship between men and women is governed by the rules of infralaw — “living law”. In Ukraine, gender relations are largely based on customary law.

Gender relations are regulated by a large number of unwritten rules. Thus, for example in politics, various political parties include women in the party’s top five or top twenty lists when nominating candidates for elections to public authorities at various levels. In this way, the parties will regulate the gender issue.

It should be noted that the law is a way to maintain and regulate gender relations, the order of gender relations in society. Gender as a phenomenon needs legal support for new social relations. The market

economy and the state-building process need a broad legal system, which should be based on ensuring gender equality, to function properly. The renewal of law and its legal principles is the basis for the restructuring of the political and economic system of society, which is the environment for the realisation and self-expression of the individual man and woman, the realisation of their rights and responsibilities, freedom and responsibility.

Family members in the general system of law occupy the rights of equality. The concept of legal equality of women and men is a set of views on what legal and social policy should be pursued in society to ensure gender equality in all spheres of public life [28, p. 10].

It is important for the modern political and legal process to achieve progress in the completed position of equality of men and women. Today, not only equality of rights and freedoms is relevant and very important, but also legal provision of equal opportunities for women and men to become equal, ie equal in rights in all spheres of public life, both *de jure* and *de facto*.

Law today enshrines gender equality as a standard of behaviour and relationships between men and women. Law is the guarantor of the establishment and functioning of equality, while gender is a social model of relations between men and women. Based on the above, we can talk about gender law. Gender law is a legal institution based on legal norms that establish means of ensuring gender equality that do not depend on gender and provide for certain limits of differences in rights, depending on gender [29].

Thus, gender law provides a system of guarantees to ensure equal rights for both men and women. The scope of gender law extends to various areas of law that ensure the realisation of personal, economic, political, cultural or social human rights.

Equality between men and women must be understood as equality of their social status. Gender equality implies equal realisation of human rights and opportunities for participation in political, economic, cultural and social development. And achieving gender equality is a necessary condition for the proper functioning of economic, political, cultural and social systems. It is also necessary to consider the fact that equal treatment of women does not guarantee their equality.

Gender policy is aimed at social progress, and provides the same state and public view of life of both sexes, balanced opportunities for their development, as equal in rights, duties, freedoms and responsibilities, ensuring equal conditions for self-development and self-expression of both men and women, and a fair assessment of the results of their activities in all spheres of life [30].

Equality between men and women means equality in rights and freedoms; equality of responsibility; equality of duty; equality of chances and opportunities, etc. Equality of opportunity in the implementation of gender policy is a whole system of means, including

equal factual conditions that promote the distribution and use of both economic and political, cultural and social resources, which make it impossible to discriminate or restrict gender.

The constitutions of almost all democracies enshrine three standards of equality: equality regardless of nationality and race; equality of citizens before the law; and equality between men and women. All these principles of equality belong to the basic principles of the legal status of man and citizen.

In general, it should be noted that the law should be a factor that does not deny the peculiarities of each sex. It leads to an equal distribution of political, economic, social, cultural and other resources and opportunities. In addition, the principle of equality of the sexes provides for the right to distinction, and this must be enshrined in law.

In addition to the principles listed above, gender policy contains a number of provisions on discrimination and ways to overcome it. Discrimination against women is any restriction or difference on the grounds of sex [13].

In the context of the COVID-19 pandemic, quarantine measures have significantly changed the situation and life of many women both in Ukraine and in the world. For women, for example, quarantine restrictions, and as a result restrictions on access to social infrastructure such as schools and kindergartens, have led to an increase in the rate of unpaid homework for care. Under quarantine conditions, when all family members were forced to stay at home, women began to spend more time on household chores than men [31]. In addition, the number of women victims of mental and physical violence at home has increased at this time. In this regard, a number of measures have been taken in Ukraine to increase the level of assistance to victims of domestic violence and discrimination [32].

Although men and women are politically equal, and women can now compete with men in various fields, they do so on terms created by men. Examining the labour market in Ukraine in 2020, we note that 79.2% of men and 68.9% of women are economically active out of the total working age population [33]. These statistics are typical for EU countries, but women in Ukraine, compared to women in other countries, are forced to leave paid work conditioned upon the need to perform unpaid housework [32].

In addition, we should note that the labour market of Ukraine is characterised by stratification by type of activity for men and women. In addition, there is vertical segregation. And this in turn means a hierarchy of positions. There are whole areas that provide the vast majority of the working male population [34]. As for women, their percentage is much lower compared to men in management and executive positions, but is much higher in clerical and support work. Such a division in the labour market inevitably leads to a gender

pay gap. Thus, the average wage of women compared to men is 3/4 of wages [33]. Gender inequality occurs in Ukraine despite the existence of an optional protocol aimed at guaranteeing gender equality. There is a whole procedure for investigating systematic, serious violations of women's rights [35].

Many countries around the world have signed the UN Declaration, which sets out ten commitments to ensure gender policy: to promote changes in attitudes, policies, legislation to remove all obstacles to equality, justice and dignity in society and the family; promoting the equal participation of rural and urban women, including women with disabilities, in economic, social or political life; policy development, creating a structure to ensure fair representation of both sexes in decision-making at all levels [36].

Analysing gender policy and the process of ensuring gender equality, it should be noted that the empowerment of women is possible only in the process of ensuring equality of both sexes. Thus, to overcome inequalities between men and women in the area of separation of powers and decision-making, governments and other actors should encourage active gender mainstreaming policies in all strategies and programs; the national mechanism for the advancement of women has been recognised as the central coordination unit within the government. The government's policy in this direction should be effective and aimed at achieving equality of the sexes [37].

The Constitution of Ukraine [15] legally defines the gender strategy for the development of Ukrainian society, according to which equality of men and women is defined as a condition for ensuring justice and a prerequisite for achieving equality; guarantees the provision of equal rights and opportunities as a fundamental human and civil right; the right to equality permeates all other rights and freedoms; the expansion of women's rights and freedoms, and the provision of equality between men and women is seen as a condition for building a stable democratic, developed society. Equality between men and women is an integral part of fundamental human rights. So in particular, according to Art. 21 "all people are free and equal in their dignity and rights" [15, p. 21]. Equality of rights of women and men is ensured by: providing women with equal opportunities with men in socio-political and cultural activities, in education and training, in work and remuneration for it, as stated in Art. 24 of the Basic Law of Ukraine [15].

It should be noted that "to achieve gender equality and the empowerment of women, it is necessary to overcome inequalities between men and women, girls and boys, and to ensure their equality in rights, responsibilities, opportunities and chances. Gender equality

implies that the needs, interests, problems, experiences and priorities of both men and women are an integral part of the development, implementation of national monitoring and evaluation, including at the international level, of all activities in all areas" [38]. The principle of equality is part of the principle of non-discrimination.

In the perspective of gender policy, we note that all human rights are harmoniously correlated with the idea of gender equality [6]. For example, legislation equally provides and guarantees various kinds of economic, political, cultural and social rights. Among them we can highlight such social rights as the right of the employee to protect his dignity at work; the right of employees, regardless of gender, to equal pay for equivalent work; the right of employees with family responsibilities at the level of opportunity and equal treatment [39, Art. 4, 26]. The social status of women in particular is considered in various areas such as politics.

Conclusions

So, summarising the above, we note that gender policy, which is implemented both at the high — global level and at the lower — state level aims to establish equal status for women and men. Among these areas of activity can be mentioned: protection of personal rights regardless of gender; women's access to public office at all levels; equal rights in married life; prevention of domestic and social violence; anti-discrimination; mutual rights and responsibilities towards children in the family; providing both men and women with equal legal capacity and, accordingly, equal opportunities for their realisation, development of abilities and talent.

Today, thanks to European and Ukrainian legislation, the foundations of legal opportunities for gender transformation have been laid, the gender component has been significantly expanded, gender approaches in law-making, human rights and law enforcement, and in managing gender processes in various spheres of society have been implemented. And the study of mutual experience, either in the adoption of various legislative acts that shape gender policy, or in the generalisations of various gender transformations, the expansion of various special measures that ensure the balance of articles will positively affect the legal culture of the people in addressing gender issues.

Gender phenomena occurring in the world and in Ukraine can be analysed, which will predict their further development both with the help of a sociological approach to law and with the help of various legal constructions. The task facing both legal scholars and legal practitioners today is to transfer and integrate various kinds of customary gender norms into the system of modern legal norms.

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Правові аспекти забезпечення гендерної рівності

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Анотація

Стаття присвячена дослідженню цінності ідеї гендерної рівності. Правова (гендерна) рівність передбачає наявність рівних прав і можливостей як для чоловіків так і для жінок. В умовах євроінтеграційних процесів для України важливим і актуальним є питання забезпечення і гарантування соціальної і правової рівноправності в усіх сферах суспільного життя як де-юре так і де-факто. З огляду на це, подолання прогалін і гарантування гендерної рівності, а також аналіз юридичного забезпечення і гарантування рівних прав і можливостей як для чоловіків так і для жінок в усіх сферах суспільного життя робить дане дослідження дуже актуальним. Мета статті полягає у дослідженні забезпечення гендерної рівності у суспільстві, аналізі нормативно-правової бази, а також у з'ясуванні причин гендерної дискримінації та сприянні подоланню гендерних прогалін у соціальній, культурній, політичній і економічній сферах тощо. При дослідженні цієї проблеми використовується широкий спектр методів наукового пізнання: теоретичний метод дозволяє впорядкувати різноманітні знання про гендер. Соціологічний метод сприяє визначенню різноманітних гендерних параметрів та співставлення їх з соціальними характеристиками. Застосування історичного методу дозволяє здійснити гендерну оцінку різних історичних процесів. Прогностичний метод дозволив з'ясувати перспективи гендерного розвитку як в краї зокрема так і в розвиненому цивілізованому суспільстві загалом. Соціально-психологічний метод дозволяє дослідити соціальні ролі чоловіків і жінок, відносини між статями, їх особливості та психологічні характеристики. У статті представлені результати щодо дослідження гендерної проблематики як в світі так і в Україні; розкрито особливості поділу суспільства на дві соціальні групи за гендерною ознакою; з'ясовано як впроваджується гендерний підхід в політиці, економіці та соціальній сфері; визначено основні напрями забезпечення гендерної рівності, що гарантуються міжнародним та українським законодавством. В науковій статті обґрунтовано необхідність використання гендерного компоненту в законодавчій діяльності, а також в політиці, економіці, соціальній сфері; обґрунтовано необхідність використання передового світового досвіду забезпечення і реалізації гендерної рівності; за результатами системного наукового аналізу визначено основні засади реалізації гендерної політики у сучасному національному та зарубіжному законодавстві

Ключові слова: гендер, стать рівноправність чоловіка і жінки, дискримінація за гендерною ознакою